

Appendix E

This instrument prepared by:

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DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (hereinafter "Declaration") is made this ____ day of _____, 200____, by _____ (hereinafter "GRANTOR") and the **Florida Department of Environmental Protection** (hereinafter "DEP").

RECITALS

A. GRANTOR is the fee simple owner of that certain real property situated in the County of Seminole, State of Florida, more particularly described in **Exhibit "A"** attached hereto and made a part hereof (hereinafter the "Property");

B. The United States Environmental Protection Agency (hereinafter "EPA") Facility Identification Number for the Sanford Gasification Plant Site is FLD984169193, of which all or a portion of the Property is a part thereof.

C. "Hazardous Substances" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act were discharged on the Property from the Sanford Gasification Plant Site as documented in the following EPA Records of Decision ("ROD"):

1. Amended ROD for Operable Unit 1, dated September 21, 2006, on file at <http://www.epa.gov/superfund/sites/rods/fulltext/a2006040001230.pdf>
2. ROD for Operable Unit 2, dated June 12, 2001, on file at <http://www.epa.gov/superfund/sites/rods/fulltext/r0401586.pdf>; and

3. ROD for Operable Unit 3, dated September 21, 2006, on file at <http://www.epa.gov/superfund/sites/rods/fulltext/r2006040001227.pdf>.

D. EPA entered into that certain Consent Decree, U.S. District Court, Middle District of Florida, Civil Action, File No. _____ dated _____ (hereinafter “Consent Decree”), with Florida Power Corporation, Atlanta Gas Light Company, Florida Power & Light Company, Florida Public Utilities Company, and the City of Sanford Florida (collectively referred to herein as the “Group”), which is incorporated herein by reference.

E. The Consent Decree is on file with the above-mentioned U.S. District Court.

F. The Consent Decree requires the use of a number of remediation activities (collectively the “remedies”), including excavation, stabilization of the bed and banks of Cloud Branch Creek, and in-situ solidification (hereinafter “ISS”), which creates a stable, low-permeability, monolithic mass in the soil of affected properties, and groundwater remedy described in the applicable regulations as “monitoring for natural attenuation.” DEP has approved the remediation activities required to be implemented by the Consent Decree.

G. Hazardous Substances on the Property have been remediated in accordance with the Consent Decree and Record of Decision.

H. Consistent with applicable Florida and federal environmental laws and regulations, with the ROD, and with the Consent Decree, the principles of “risk-based corrective action” necessitate that certain land use controls be established for the property and maintained in perpetuity through this Declaration of Restrictive Covenant. The land use controls established in this Declaration of Restrictive Covenant have been approved by the EPA and the DEP. It is the intent of the restrictions in this Declaration to reduce or eliminate the risk of exposure to any Hazardous Substances present on the Property, to reduce or eliminate the possibility that the applicable remedies are disturbed and to reduce or eliminate the threat of migration of any such Hazardous Substances.

NOW, THEREFORE, in compliance with all applicable Florida and federal environmental laws and regulations, embodied in and enforced through the Consent Decree and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the undersigned parties, GRANTOR agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Except as required or permitted by the Consent Decree, or as may be required or permitted by the EPA or DEP pursuant to an enforceable legal mandate or order protective of public health, the following restrictions are imposed on the Property, in the area shown on **Exhibit B** (sealed survey of the remediation area):
 - a. There shall be no access to or withdrawal or use of the surface water for consumption, recreation, fishing, drinking, bathing, swimming, irrigation, or any other purpose.

- b. There shall be no access to or withdrawal or use of any groundwater for consumption, irrigation or any other purpose and there shall be no drilling or construction of any wells for any purpose.
 - c. There shall be no stormwater swales, stormwater detention or retention facilities, ditches, or other structures or equipment affecting surface or groundwater.
 - d. There shall be no construction, excavation, disturbance, damage, drilling, digging, penetration, movement, dislodging, disturbance or impact to, on or in any area of material stabilized by the ISS process.
 - e. There shall be no construction, excavation, disturbance, damage, drilling, digging, penetration, movement, dislodging, disturbance or impact to, on or in any area of Cloud Branch Creek.
3. It is the intention of GRANTOR that the restrictions contained in this Declaration shall touch and concern the Property, run with the land and with the Title to the Property in perpetuity, and shall apply to and be binding upon and inure to the benefit of the successors and assigns of GRANTOR, and to EPA, and to DEP, and to the members of the Group, as to each of their respective successors and assigns, and to any and all parties hereafter having any right, title, or interest in the Property or any part thereof. DEP, EPA, and the members of the Group or their respective successors and assigns may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of DEP, EPA, or members of the Group to exercise its right in the event of the failure of the GRANTOR to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of any rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by GRANTOR, DEP, EPA, and all members of the Group as provided in paragraph 6 hereof. This Declaration may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by these restrictions.
4. To ensure the perpetual nature of this Declaration, GRANTOR shall reference these restrictions in any subsequent deed of conveyance, including the recording book and page of record of this Declaration.
5. EPA, DEP, all members of the Group and their respective representatives, successors and assigns, shall have access to the Property at all reasonable times for the purpose of conducting any activity relating to the Property as necessary or appropriate under the terms of the Consent Decree or any orders or requirements issued by EPA or DEP related thereto, or for the purpose of monitoring the restrictions set forth above.
6. This Declaration is binding on GRANTOR and its successors and assigns until a release of covenant is executed by the DEP Secretary (or designee) and

GRANTOR and its successors and assigns, and approved in writing by EPA and all members of the Group or their successors and assigns, and is recorded in the land records of Seminole County. DEP will not approve the release of any requirement of these restrictions unless the applicable cleanup target level(s) established under the Florida Statutes and DEP rules have been achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both GRANTOR, DEP, or their respective successors and assigns, and approved in writing by EPA and all members of the Group, or their successors and assigns, and be recorded by GRANTOR, or its successors and assigns, as an amendment hereto.

7. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions thereof. All such other provisions shall continue unimpaired in full force and effect.
8. GRANTOR covenants and represents that on the date of execution of this Declaration that GRANTOR is seized of the Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. GRANTOR also covenants and warrants that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR's rights to impose the restrictive covenants described in this Declaration, or that if such liens, mortgages, or encumbrances do exist, the written consent of all applicable lien holders or mortgagees is included in this Declaration.

IN WITNESS WHEREOF, GRANTOR has executed this instrument, this _____ day of _____, 20__.

Signed, sealed and delivered in the presence of:_____

OWNER

[Owner Name]

Address: _____

Witness: _____

Date: _____

Print Name: _____

Witness: _____

Date: _____

Print Name: _____

STATE of _____

COUNTY of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

Personally Known _____ OR Produced Identifications _____.

Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel.

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this _____ day of _____, 20____.

Signed, sealed and delivered in the presence of:_____

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

Print Name: _____

Title: _____

Address: _____

Witness: _____

Date: _____

Print Name: _____

Witness: _____

Date: _____

Print Name: _____

STATE of _____

COUNTY of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____.

Personally Known _____ OR Produced Identifications _____.

Type of Identification Produced _____.

Signature of Notary Public

Print Name of Notary Public

Commission No. _____

Commission Expires: _____

Exhibit A
Legal Description